IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1747 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN D/O.SHANKERBHAI BHAICHANDDAS - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HRIDAY BUCH for Appellant(s) : 1,
MR HL JANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 28/11/2006

ORAL JUDGMENT

1. Present appeal is filed by the appellant-original accused in Juvenile Case No. 125 of 1992. The learned President of the Juvenile Justice Board, Ahmedabad was pleased to convict the appellant for an

offence under Section 302 of the Indian Penal Code and award three years' special custody and fine of Rs. 75,000/-and for an offence under Section 201 of the Indian Penal Code, further fine of Rs. 25,000/-.

2. The President, Juvenile Justice Board was pleased to order that, in the event of recovery of the fine amount from the accused, 90% amount be paid to the parents of the victim under Section 357 of the Code of Criminal Procedure.

The President, Juvenile Justice Board was also pleased to order that, under Section 15(1)(c) of the Juvenile Justice Act, the accused is ordered to render social service for a period of ten years, which was to commence after expiry of the sentence of special custody. The President, Juvenile Justice Board was pleased to order that, from 21st of every English month till the end of month for ten years, the accused shall undertake teaching work in the observation home at Khanpur, where children are kept under Section 2(d) of the Juvenile Justice Act.

3. The appeal was filed on 22.9.2006. The matter was taken up for hearing on 25.09.2006. The record and proceeding of Juvenile Case No. 125 of 1992 was called for. After the same was received, the matter was heard on 12.10.2006 and the matter was admitted. The Court was also pleased to extend the period to surrender granted by the President, Juvenile Justice Board from time to time.

4. By virtue of that order, the appellant-accused is yet to take the sentence.

5. The facts of the case are that an offence was alleged to have been committed at village Rampura. It was the case of the prosecution that the appellant and her parents had committed murder of the daughter of the complainant.

As the appellant was minor, aged about 15 years, at the time of incident, the appellant was treated as 'delinquent juvenile' and, therefore, a separate chargesheet was filed before the President, Juvenile Justice Board, Ahmedabad. Juvenile Case No. 125 of 1992 was registered. It is to be noted that, at the relevant time, Juvenile Justice Act, 1986 was in force, trial remained pending before the Juvenile Justice Board.

6. The case against the parents of the appellant was committed to the Court of Sessions and was registered as Sessions Case No.152 of 1992. After the trial, the learned Additional Sessions Judge, Ahmedabad (Rural), by judgment and order dated 19.8.1995 was pleased to acquit the accused- parents of the appellant.

During pendency of the trial, in the year 2000, Juvenile Justice Act, 1986 is repealed and new Act has come into force. As provided in Section 3 of the

new Act, 'an inquiry in respect of the juvenile in conflict with law which has been initiated has to be continued and the orders are to be passed as if such person had continued to be a juvenile'. For ready perusal, Section 3 of the new Act is reproduced hereinbelow:

> "**3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.**- Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."

In the trial before the Juvenile Justice Board, the appellant herein produced entire evidence recorded in Sessions No. 152 of 1992 as well as the judgment of the Sessions Court.

The prosecution did not lead any evidence to prove the case against the appellant.

7. The President, Juvenile Justice Board has recorded a conviction of the appellant herein for the

offence punishable under Section 302 and 201 of the Indian Penal Code and imposed the sentence as aforesaid.

The appellant made an application and, on such application being made, the President of the Juvenile Justice Board was pleased to continue the bail upto 4.9.2006.

The appellant herein filed an appeal before the Sessions Court, Ahmedabad (Rural), wherein, the learned Presiding Officer, Fast Track Court No.4, Viramgam passed an order of returning the papers of Criminal Appeal for producing the same before this Court on 4.9.2006.

The appellant approached once again to the Juvenile Justice Board and prayed to continue the bail. The President, Juvenile Justice Board was pleased to continue the bail of the appellant till 4.10.2006.

Thereafter, the said bail is extended by this Court from time to time.

8. Learned senior counsel Mr. Barot submitted that the judgment and order passed by the President, Juvenile Justice Board is bad in law, inasmuch as it is passed without appreciating the facts and circumstances of the case and the evidence on record.

The learned senior counsel elaborated the same

by saying that, in fact, there is no evidence in the eye of law in Juvenile Case No. 125 of 1992 inasmuch as the prosecution has chosen not to lead any evidence.

9. The learned senior counsel submitted that the Juvenile Justice Board has erred in placing reliance on the evidence, which was led by the prosecution in Sessions Case No. 152 of 1992. He submitted that it is true that the certified copies of the said evidence were produced on record before the Juvenile Justice Board by the appellant, but that was done by the appellant in her defence as the learned Sessions Judge was pleased to acquit the co-accused, i.e. the parents of the appellant, on careful consideration of that evidence.

The learned senior counsel submitted that this is nothing but an irony of fate that on the same set of evidence, the learned Sessions Judge was pleased to record acquittal while the President of Juvenile Justice Board is pleased to record conviction.

10. The learned senior counsel, in this regard, invited attention of the Court to Section 3 of the Indian Evidence Act, 1872. He submitted that the term 'evidence' is to be interpreted as provided under Section 3 of the Indian Evidence Act. He submitted that the 'evidence' means and includes (i) all statements which the Court permits or requires to be made before it by witnesses in relation to matters

of fact under inquiry (oral evidence), (ii) all documents, including electronic records produced for inspection of the Court (documentary evidence).

The learned senior counsel submitted that, that being so, the certified copies produced by the appellants in defence could not have been treated as evidence against the appellant. He submitted that the President of the Juvenile Justice Board ought not to have treated the certified copies of the evidence produced by the appellant in her defence as evidence against her. He submitted that on the same set of evidence, the learned Sessions Judge has recorded acquittal of the co-accused, whereas the President of the Juvenile Justice Board is pleased to record conviction of the appellant.

11. The learned senior counsel submitted that the President of the Juvenile Justice Board, who too is a judicial officer- Magistrate, could not have recorded a conviction relying upon the certified copies of the evidence, which was led in a sessions case, and which was appreciated by a sessions judge, relying on which he was pleased to record an acquittal.

12. The learned senior counsel submitted that, even otherwise, if the case is to be appreciated on merits, it was a case of 'circumstantial evidence'. He submitted that in the cases of 'circumstantial evidence', cardinal principle of law is that there must be an unbroken chain of evidence so as to

establish guilt of the accused. Now, if a higher judicial officer is not able to find an unbroken chain, a subordinate judicial officer could not have recorded conviction without there being anything in addition to the said evidence. He submitted that this is on the face of it illegal and warrants an interference at the hands of this Court. He submitted that the same should be quashed and set aside without allowing it to operate for a minute.

13. Learned senior counsel submitted that for these reasons and also the reasons which are set out in grounds set out in the appeal memo, like error in recording conviction by placing reliance on Section 15(1)(g) of the Act. The present appeal is required to be allowed and the conviction recorded is required to be set aside.

Learned APP Mr. H.L. Jani submitted that, assuming for the sake or argument that an error is committed by the President, Juvenile Justice Board, the same should not allow the appellant to go free without there being meaningful trial of the case. He submitted that even if the President, Juvenile Justice Board has committed an error in not asking the Juvenile Board to lead the evidence in the trial before it, it cannot result into acquittal of the present appellant without there being a meaningful trial.

14. The learned APP submitted that it will be in the fitness of things and ends of justice will serve if

the present judgment and order of the President, Juvenile Justice Board is quashed and set aside and the matter is remitted for retrial in accordance with law.

15. Taking into consideration the rival submissions and taking into consideration the relevant provisions of law, this Court finds it appropriate to quash and set aside the judgment of the President, Juvenile Justice Board, Ahmedabad in Juvenile Case No. 125 of 1992 dated 4.8.2006.

16. For the reasons recorded hereinabove, judgment of the President, Juvenile Justice Board, Ahmedabad in Juvenile Case No. 125 of 1992 dated 4.8.2006 is quashed and set aside and the matter is remanded to the Juvenile Justice Board, Ahmedabad. The law must take its course and the appellant, who is an accused, must face the trial.

17. Looking to the fact that the matter is old enough, by now more than one and half decades, the Juvenile Justice Board is directed to give priority to the matter and decide the same afresh as expeditiously as possible, preferably by **31.03.2007** in accordance with law.

Sd/-

(RAVI R. TRIPATHI, J.)

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